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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 JERMAINE D. DOSS,

7 Plaintiff,

8 v.

9 TOM HEYMAN, et al.,

Defendants.

C16-1695 TSZ

ORDER

10 THIS MATTER comes before the Court on a Report and Recommendation
11 (“R&R”) by the Honorable James P. Donohue, Chief United States Magistrate Judge,
12 docket no. 4, recommending that this action be dismissed for failure to state a claim upon
13 which relief may be granted and that plaintiff’s application to proceed *in forma pauperis*
14 be denied as moot. Two weeks after the R&R was issued, plaintiff filed a motion, docket
15 no. 5, for voluntary dismissal without prejudice. On the same day, he filed an “Updated
16 Report and Recommendation,” docket no. 7, which was treated by the Clerk as an
17 objection to Magistrate Judge Donohue’s R&R. Having reviewed the papers filed in this
18 matter, as well as the materials filed in a related case, C16-1618-JLR-BAT, which was
19 previously dismissed without prejudice, the Court enters the following order.

20 **Discussion**

21 When plaintiff Jermaine D. Doss commenced this action, he was in custody at the
22 King County Regional Justice Center (“RJC”) in Kent, Washington. He has since been
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1 transferred to federal custody and is now being held at SeaTac Federal Detention Center
2 (“FDC”).¹ See Notice (docket no. 8). In both this case and C16-1618-JLR-BAT, plaintiff
3 alleged that, as a result of taking the prescription medication Risperdal, he has suffered
4 from gynecomastia, or breast development. In C16-1618-JLR-BAT, plaintiff sued the
5 King County Director of Adult and Juvenile Detention, William Hayes, alleging a claim
6 under 42 U.S.C. § 1983 for deliberate indifference and seeking \$2.5 million in damages.
7 The complaint in C16-1618-JLR-BAT was dismissed without prejudice for failure to
8 plead any facts linking Director Hayes to the alleged deprivation of constitutional rights.
9 See Report and Recommendation (C16-1618-JLR-BAT, docket no. 8).

10 Janssen Pharmaceuticals, Inc. (“Janssen”), a pharmaceutical company of Johnson
11 & Johnson, manufactures and distributes Risperdal in the United States. In this matter,
12 plaintiff wishes to sue Tom Heyman, alleging (apparently incorrectly) that he is the Chief
13 Executive Officer of Janssen. The R&R recommends dismissing plaintiff’s claim against
14 Heyman because he is not a person acting under color of state or federal law within the
15 meaning of 42 U.S.C. § 1983 and cannot be held liable under such statute for “deliberate
16 indifference” or other deprivation of constitutional rights. To the extent that plaintiff, in
17 moving to dismiss without prejudice, seeks to further pursue a § 1983 claim against a
18 non-governmental actor like Heyman or Janssen, plaintiff’s motion is denied in part, and
19 his § 1983 claim against Heyman is DISMISSED with prejudice. To the extent that
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21 ¹ Plaintiff was convicted of making a false claim in violation of 18 U.S.C. § 287, and sentenced to time
22 served in Case No. CR12-195 JLR. Whether plaintiff is held at FDC in relation to CR12-195 JLR or
23 some other matter cannot be determined from the records currently available to the Court.

1 plaintiff wishes to pursue claims under the appropriate product liability or consumer
2 protection laws against Heyman, Janssen, or another corporate entity, plaintiff's motion is
3 granted in part, and this action is dismissed without prejudice as to such claims.

4 Plaintiff is ADVISED that if he files another case involving the same claims as
5 this action and/or C16-1618-JRL-BAT, any dismissal of such future matter will be with
6 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(B).

7 **Conclusion**

8 For the foregoing reasons, the Court ORDERS:

9 (1) The R&R, docket no. 4, is ADOPTED.

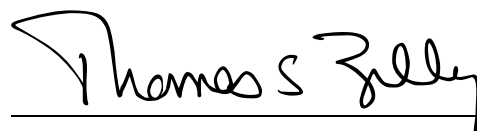
10 (2) Plaintiff's motion for dismissal without prejudice, docket no. 5, is DENIED
11 in part as to his § 1983 claim against defendant Tom Heyman, which is dismissed **with**
12 prejudice, and GRANTED in part as to future claims under the appropriate product
13 liability or consumer protection laws.

14 (3) Plaintiff's application to proceed *in forma pauperis*, docket no. 1, is
15 DENIED as moot.

16 (4) The Clerk is DIRECTED to enter judgment accordingly, to send a copy of
17 this Order to plaintiff pro se and to Magistrate Judge Donohue, and to CLOSE this case.

18 IT IS SO ORDERED.

19 Dated this 6th day of December, 2016.

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22 Thomas S. Zilly
23 United States District Judge